

SENATE BILL

No. 5

Introduced by Senator Hollingsworth

February 24, 2010

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as introduced, Hollingsworth. Sales and use taxes: exclusion: trade-in motor vehicle.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”

This bill would exclude from the terms “gross receipts” and “sales price” the value of a motor vehicle traded in for a new motor vehicle, including a new motorcycle, if the value of the trade-in motor vehicle is separately stated on the new motor vehicle invoice or bill of sale or similar document provided to the purchaser.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6011 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6011. (a) "Sales price" means the total amount for which
- 4 tangible personal property is sold or leased or rented, as the case
- 5 may be, valued in money, whether paid in money or otherwise,
- 6 without any deduction on account of any of the following:
- 7 (1) The cost of the property sold.
- 8 (2) The cost of materials used, labor or service cost, interest
- 9 charged, losses, or any other expenses.
- 10 (3) The cost of transportation of the property, except as excluded
- 11 by other provisions of this section.
- 12 (b) The total amount for which the property is sold or leased or
- 13 rented includes all of the following:
- 14 (1) Any services that are a part of the sale.
- 15 (2) Any amount for which credit is given to the purchaser by
- 16 the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) “Sales price” does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers’ or importers’ excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers’ or importers’ excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal

1 property measured by a stated percentage of sales price or purchase
2 price, whether the tax is imposed upon the retailer or the consumer.

3 (7) Separately stated charges for transportation from the
4 retailer's place of business or other point from which shipment is
5 made directly to the purchaser, but the exclusion shall not exceed
6 a reasonable charge for transportation by facilities of the retailer
7 or the cost to the retailer of transportation by other than facilities
8 of the retailer. However, if the transportation is by facilities of the
9 retailer, or the property is sold for a delivered price, this exclusion
10 shall be applicable solely with respect to transportation which
11 occurs after the purchase of the property is made.

12 (8) Charges for transporting landfill from an excavation site to
13 a site specified by the purchaser, either if the charge is separately
14 stated and does not exceed a reasonable charge or if the entire
15 consideration consists of payment for transportation.

16 (9) The amount of any motor vehicle, mobilehome, or
17 commercial coach fee or tax imposed by and paid to the State of
18 California that has been added to or is measured by a stated
19 percentage of the sales or purchase price of a motor vehicle,
20 mobilehome, or commercial coach.

21 (10) (A) The amount charged for intangible personal property
22 transferred with tangible personal property in any technology
23 transfer agreement, if the technology transfer agreement separately
24 states a reasonable price for the tangible personal property.

25 (B) If the technology transfer agreement does not separately
26 state a price for the tangible personal property, and the tangible
27 personal property or like tangible personal property has been
28 previously sold or leased, or offered for sale or lease, to third
29 parties at a separate price, the price at which the tangible personal
30 property was sold, leased, or offered to third parties shall be used
31 to establish the retail fair market value of the tangible personal
32 property subject to tax. The remaining amount charged under the
33 technology transfer agreement is for the intangible personal
34 property transferred.

35 (C) If the technology transfer agreement does not separately
36 state a price for the tangible personal property, and the tangible
37 personal property or like tangible personal property has not been
38 previously sold or leased, or offered for sale or lease, to third
39 parties at a separate price, the retail fair market value shall be equal
40 to 200 percent of the cost of materials and labor used to produce

the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

(13) The value of a motor vehicle traded in for a new motor vehicle, including a new motorcycle, if the value of the trade-in motor vehicle is separately stated on the new motor vehicle invoice or bill of sale or similar document provided to the purchaser.

SEC. 2. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) “Gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

1 (2) The cost of the materials used, labor or service cost, interest
2 paid, losses, or any other expense.

3 (3) The cost of transportation of the property, except as excluded
4 by other provisions of this section.

5 (4) The amount of any tax imposed by the United States upon
6 producers and importers of gasoline and the amount of any tax
7 imposed pursuant to Part 2 (commencing with Section 7301) of
8 this division.

9 (b) The total amount of the sale or lease or rental price includes
10 all of the following:

11 (1) Any services that are a part of the sale.

12 (2) All receipts, cash, credits and property of any kind.

13 (3) Any amount for which credit is allowed by the seller to the
14 purchaser.

15 (c) "Gross receipts" do not include any of the following:

16 (1) Cash discounts allowed and taken on sales.

17 (2) Sale price of property returned by customers when that entire
18 amount is refunded either in cash or credit, but this exclusion shall
19 not apply in any instance when the customer, in order to obtain
20 the refund, is required to purchase other property at a price greater
21 than the amount charged for the property that is returned. For the
22 purpose of this section, refund or credit of the entire amount shall
23 be deemed to be given when the purchase price less rehandling
24 and restocking costs are refunded or credited to the customer. The
25 amount withheld for rehandling and restocking costs may be a
26 percentage of the sales price determined by the average cost of
27 rehandling and restocking returned merchandise during the
28 previous accounting cycle.

29 (3) The price received for labor or services used in installing or
30 applying the property sold.

31 (4) (A) The amount of any tax (not including, however, any
32 manufacturers' or importers' excise tax, except as provided in
33 subparagraph (B)) imposed by the United States upon or with
34 respect to retail sales whether imposed upon the retailer or the
35 consumer.

36 (B) The amount of manufacturers' or importers' excise tax
37 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
38 Code for which the purchaser certifies that he or she is entitled to
39 either a direct refund or credit against his or her income tax for

1 the federal excise tax paid or for which the purchaser issues a
2 certificate pursuant to Section 6245.5.

3 (5) The amount of any tax imposed by any city, county, city
4 and county, or rapid transit district within the State of California
5 upon or with respect to retail sales of tangible personal property
6 measured by a stated percentage of sales price or gross receipts
7 whether imposed upon the retailer or the consumer.

8 (6) The amount of any tax imposed by any city, county, city
9 and county, or rapid transit district within the State of California
10 with respect to the storage, use or other consumption in that city,
11 county, city and county, or rapid transit district of tangible personal
12 property measured by a stated percentage of sales price or purchase
13 price, whether the tax is imposed upon the retailer or the consumer.

14 (7) Separately stated charges for transportation from the
15 retailer's place of business or other point from which shipment is
16 made directly to the purchaser, but the exclusion shall not exceed
17 a reasonable charge for transportation by facilities of the retailer
18 or the cost to the retailer of transportation by other than facilities
19 of the retailer. However, if the transportation is by facilities of the
20 retailer, or the property is sold for a delivered price, this exclusion
21 shall be applicable solely with respect to transportation which
22 occurs after the sale of the property is made to the purchaser.

23 (8) Charges for transporting landfill from an excavation site to
24 a site specified by the purchaser, either if the charge is separately
25 stated and does not exceed a reasonable charge or if the entire
26 consideration consists of payment for transportation.

27 (9) The amount of any motor vehicle, mobilehome, or
28 commercial coach fee or tax imposed by and paid to the State of
29 California that has been added to or is measured by a stated
30 percentage of the sales or purchase price of a motor vehicle,
31 mobilehome, or commercial coach.

32 (10) (A) The amount charged for intangible personal property
33 transferred with tangible personal property in any technology
34 transfer agreement, if the technology transfer agreement separately
35 states a reasonable price for the tangible personal property.

36 (B) If the technology transfer agreement does not separately
37 state a price for the tangible personal property, and the tangible
38 personal property or like tangible personal property has been
39 previously sold or leased, or offered for sale or lease, to third
40 parties at a separate price, the price at which the tangible personal

1 property was sold, leased, or offered to third parties shall be used
2 to establish the retail fair market value of the tangible personal
3 property subject to tax. The remaining amount charged under the
4 technology transfer agreement is for the intangible personal
5 property transferred.

6 (C) If the technology transfer agreement does not separately
7 state a price for the tangible personal property, and the tangible
8 personal property or like tangible personal property has not been
9 previously sold or leased, or offered for sale or lease, to third
10 parties at a separate price, the retail fair market value shall be equal
11 to 200 percent of the cost of materials and labor used to produce
12 the tangible personal property subject to tax. The remaining amount
13 charged under the technology transfer agreement is for the
14 intangible personal property transferred.

15 (D) For purposes of this paragraph, “technology transfer
16 agreement” means any agreement under which a person who holds
17 a patent or copyright interest assigns or licenses to another person
18 the right to make and sell a product or to use a process that is
19 subject to the patent or copyright interest.

20 (11) The amount of any tax imposed upon diesel fuel pursuant
21 to Part 31 (commencing with Section 60001).

22 (12) (A) The amount of tax imposed by any Indian tribe within
23 the State of California with respect to a retail sale of tangible
24 personal property measured by a stated percentage of the sales or
25 purchase price, whether the tax is imposed upon the retailer or the
26 consumer.

27 (B) The exclusion authorized by subparagraph (A) shall only
28 apply to those retailers who are in substantial compliance with this
29 part.

30 *(13) The value of a motor vehicle traded in for a new motor*
31 *vehicle, including a new motorcycle, if the value of the trade-in*
32 *motor vehicle is separately stated on the new motor vehicle invoice*
33 *or bill of sale or similar document provided to the purchaser.*

34 For purposes of the sales tax, if the retailers establish to the
35 satisfaction of the board that the sales tax has been added to the
36 total amount of the sale price and has not been absorbed by them,
37 the total amount of the sale price shall be deemed to be the amount
38 received exclusive of the tax imposed. Section 1656.1 of the Civil
39 Code shall apply in determining whether or not the retailers have
40 absorbed the sales tax.

1 SEC. 3. Notwithstanding Section 2230 of the Revenue and
2 Taxation Code, no appropriation is made by this act and the state
3 shall not reimburse any local agency for any sales and use tax
4 revenues lost by it under this act.

5 SEC. 4. This act provides for a tax levy within the meaning
6 of Article IV of the Constitution and shall go into immediate effect.
7 However, the provisions of this act shall become operative on the
8 first day of the first calendar quarter commencing more than 90
9 days after the effective date of this act.

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